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INFO OCT-01 EA-06 IO-04 ISO-00 SP-02 AID-05 EB-04 NSC-05

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E.O. 11652: N/A

TAGS: ETRD OECD

SUBJECT: GOVERNMENT PROCUREMENT

1. SUMMARY: OCTOBER 7-11 MEETING OF OECD TRADE COMMITTEE WORKING PARTY ON GOVERNMENT PROCUREMENT (TCWP) ADDRESSED ALL ISSUES ON AGENDA. MEETING MARKED BY UNUSUALLY HIGH LEVEL OF COMMENTS AND DEGREE OF WILLINGNESS TO SETTLE ISSUES AND SIMPLIFY TEXT OF DRAFT CODE. GROUP SCHEDULED TO MEET AGAIN WEEK OF FEBRUARY 17. END SUMMARY.

2. DATA COLLECTION. OCTOBER 1 WRITTEN RESPONSES AND SUPPLEMENTARY STATEMENTS AT MEETING REVEALED THAT MAJOR COUNTRIES ARE EXPECTED TO SUPPLY ON OR SHORTLY AFTER DECEMBER 1 AT LEAST PART OF DATA ON CONTRACT AWARDS IN ACCORDANCE WITH AGREEMENT OF LAST MEETING, BUT IMPORTANT DETAILS WILL BE MISSING FROM MOST RESPONSES. SOME PROMISED TO DO BETTER UNDER URGING MAINLY FROM US, SUPPORTED BY CANADA. US EXPRESSED DISAPPOINTMENT COUNTRIES UNABLE COMPLY WITH MINIMAL DATA REQUEST THAT GROUP HAD AGREED ON, AND THAT NO STEPS CONTEMPLATED BY MOST TO SET UP MACHINERY TO COLLECT DATA ON ONGOING BASIS. US AND CANADIAN DELS STATED THAT THEY WOULD RECOMMEND TO CAPITALS THAT SITUATION CLEARLY WARRANTS REFERENCE TO NEXT MEETING OF TC SO THAT FULLER AND CLEARER MANDATE ON DATA WOULD ISSUE FROM TC TO TCWP. SEVERAL DELEGATIONS RAISED OBJECTION TO LISTING THIS SUBJECT AS FORMAL AGENDA ITEM FOR NOVEMBER TC MEETING SINCE EVALUATION OF RESPONSES TO QUESTIONNAIRE NOT POSSIBLE BEFORE TC MEETING AND TCWP NOT YET CLEAR AS TO POINTS ON WHICH TC GUIDANCE NEEDED. THOUGH OPPOSED TO SUBSTANTIVE DISCUSSION THIS ITEM AT TC, FRENCH USEFULLY PROVIDED RATIONALE FOR SHORT AND LONG-TERM DATA NEEDS, NOTING FORMER TO ASSESS POSSIBLE IMPACT OF PROPOSED CODE ON TRADE UNDER GOVERNMENT PURCHASING, AND LATTER TO IMPLEMENT SURVEILLANCE UNDER CODE. TCWP WOULD NOT SUPPORT REFERRAL OF DATA PROBLEM TO TC.

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3. DEROGATION FOR SMALL BUSINESS. DISCUSSION THIS ITEM BASED ON PROPOSAL BY SWISS WHO INTERESTED IN US SMALL BUSINESS PRACTICES. SWISS INTEREST ACTUALLY SATISFIED IN WASHINGTON PRIOR TO MEETING. AT MEETING, US AND GERMANY EXPLAINED THEIR PRACTICES REGARDING SMALL BUSINESS PROCUREMENT. JAPAN SAID IT DIFFICULT TO ADHERE TO CODE IF ITS SMALL BUSINESS ASSISTANCE UNDER GOVERN-

MENT PURCHASING HELD INCONSISTENT WITH PROPOSED CODE PROVISIONS. JAPAN WILL SUBMIT PAPER TO GROUP FOR ANALYSIS THEIR PROGRAM.

4. DISCRIMINATION BETWEEN FOREIGN SUPPLIERS AND/OR PRODUCTS. EC DISCLOSED TREND OF THINKING IN BRUSSELS ON PROPOSED TREATMENT OF THIRD-COUNTRY GOODS UNDER PROPOSED EC GOVERNMENT PURCHASING DIRECTIVE. HE SAW NO PROBLEM IN GIVING NON-DISCRIMINATORY TREATMENT TO SUPPLIERS OF A SIGNATORY COUNTRY RESIDENT IN THE EC. TREATMENT OF THIRD-COUNTRY GOODS, HE SAID, IS GOVERNED BY PRINCIPLE OF LIBRE PRACTIQUE. GOODS IMPORTED FROM A THIRD COUNTRY NORMALLY WOULD ENJOY FREE CIRCULATION WITHIN THE COMMUNITY UPON FORMAL ENTRY IN COMPLIANCE CUSTOMS REQUIREMENTS. EC SAID, HOWEVER, THAT A PRODUCT IMPORTED FOR SOLE PURPOSE OF COMPLYING WITH GOVERNMENT PROCUREMENT CONTRACT WOULD LIKELY BE REGARDED AS ABUSE OF LIBRE PRACTIQUE SYSTEM. SOME DELS, LED BY SWEDE, OPPOSED ANY OBLIGATION TO DISCRIMINATE AGAINST NON-

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SIGNATORIES, BUT OTHER DELS ALSO CLEAR NON-SIGNATORIES TO HAVE NO ACCESS TO PROVISIONS OF INSTRUMENT WHEN THEY OBJECT TO DISCRIMINATION. ON BASIS OF FIRST DAY DISCUSSION, US DEL AGREED TO PROVIDE, ON PERSONAL BASIS, TEXT TO SERVE AS BASIS FOR FURTHER DISCUSSION. THIS TEXT HAD FOLLOWING ELEMENTS: A) BINDING NATURE OF OBLIGATIONS UNDER INSTRUMENT; B) BENEFITS UNDER INSTRUMENT TO ONLY NATIONALS AND FIRMS OF PARTICIPATING COUNTRIES WHEN OFFERING GOODS, AT LEAST 50 PERCENT OF THE VALUE OF WHICH ORIGINATED WITHIN THE TERRITORY OF ONE OR MORE SUBSCRIBING GOVERNMENTS; C) ALLOW PARTICIPATING COUNTRIES TO PROVIDE SPECIAL TREATMENT FOR DEVELOPING COUNTRIES; AND D) AUTOMATIC EXTENSION TO SIGNATORIES OF ANY ADVANTAGE GREATER THAN PROVIDED IN INSTRUMENT ACCORDED A DEVELOPED COUNTRY. WE EXPLAINED VIEWS NOT NECESSARILY THOSE OF US, BUT INTENDED MAINLY GUIDE DISCUSSION IMPORTANT ASPECTS OF INSTRUMENT NOT YET ADDRESSED BY TCWP AND FOR WHICH ADDITIONAL PROVISIONS WILL BE NEEDED IN DRAFT INSTRUMENT. AFTER INCONCLUSIVE BUT PROFITABLE DISCUSSION, GROUP AGREED THAT ITEM WILL BE ON AGENCDA FOR NEXT MEETING.

5. SINGLE TENDERING. GROUP MADE CONSIDERABLE PROGRESS IN REACHING AGREEMENT ON GROUNDS FOR USE OF SINGLE TENDER PROCEDURE IN LIEU OF OPEN AND SELECTIVE TENDERING. UK CONTINUED TO INSIST ON RETAINING EXCEPTION FOR PRODUCTION FOLLOWING ON RESEARCH AND DEVELOPMENT. GERMANY BELATEDLY PROPOSED ADDITION OF OTHER BASIS FOR USE OF PROCEDURE, BUT WAS PREVAILED ON BY GROUP TO WITHDRAW THEM POSSIBLY AT NEXT MEETING BECAUSE POINTS ALREADY COVERED OR FELL OUTSIDE SCOPE OF INSTRUMENT. SINGLE TEXT OF THIS SUBJECT ACHIEVED WITH CONSIDERABLE REDUCTION OF BRACKETS SHOWING REMAINING AREAS OF DISAGREEMENT.

6. SURVEILLANCE. DISCUSSION OF SURVEILLANCE MECHANISM LIMITED OFFICIAL USE

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BEGAN WITH FRENCH PRESENTATION, SPEAKING FOR EC, OUTLINING THEIR RESPONSE TO OUR PROPOSAL FOR SURVEILLANCE MECHANISM ON OPERATION OF CODE. UNDER EC PROPOSAL, BASIC ORGANIZATION WOULD BE LARGE COMMITTEE (COMITE DE SURVEILLANCE) COMPOSED OF ALL SIGNATORY COUNTRIES. IN CASES INVOLVING DISPUTES BETWEEN SIGNATORY COUNTRIES WHICH COULD NOT BE RESOLVED THROUGH BILATERAL CONSULTATION, LARGER COMMITTEE WOULD SELECT SMALLER COMMITTEE (COMITE RESTREINTE) COMPOSED OF NEUTRAL EXPERTS. SMALLER COMMITTEE WOULD STUDY PROBLEM AND MAKE RECOMMENDATION TO GOVERNMENTS CONCERNED. IF GOVERNMENTS DECLINED TO ACCEPT RECOMMENDATION OF SMALLER COMMITTEE, THE ISSUE WOULD GO TO THE SURVEILLANCE COMMITTEE. US STATED NOT WEDDED TO ITS OWN PROPOSAL AND PRESSED EC FOR GREATER DETAIL ON ITS PROPOSAL. EC NOT YET IN POSITION TO FLESH OUT PROPOSAL. TCWP AGREED TO REFLECT ON DISCUSSION AND RESUME AT NEXT MEETING.

7. PROTESTS. DEBATE ON PROVISIONS FOR PROTESTS CENTERED ABOUT /US REDRAFT COMBINING PARAS. 33 AND 34 OF DRAFT INSTRUMENT. MANY DELEGATIONS EXPRESSED CONCERN THAT US REDRAFT (AS WELL AS CURRENT BRACKETED LANGUAGE OF PARA. 34 OF DRAFT INSTRUMENT) WOULD REQUIRE SIGNATORY COUNTRIES TO SET UP SPECIAL MECHANISM FOR HEARING AND REVIEW OF PROTESTS FROM BIDDERS. IN SPITE OF US CLARIFICATION THAT LANGUAGE WOULD NOT OBLIGE ANY SIGNATORY GOVERNMENT NOW HAVING A SYSTEM FOR HEARING AND REVIEW OF PROTESTS TO ADD TO OR CHANGE THAT SYSTEM, GROUP WAS

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UNABLE TO AGREE ON NEW LANGUAGE OR REMOVAL OF BRACKETS AROUND PARA. 34. IT WAS AGREED TO LEAVE PARAS. 33 AND 34 AS THEY NOW STAND AND TO CONSIDER THE QUESTION AGAIN AT NEXT TCWP MEETING.

8. CRITERIA OF AWARD. CONSIDERABLE PROGRESS WAS MADE IN AREA OF CRITERIA BY WHICH PURCHASING ENTITIES AWARD CONTRACTS, REFLECTING EC ACCEPTANCE OF /US CONCEPT THAT ALL FACTORS TO BE CONSIDERED MUST BE SPELLED OUT BEFOREHAND. AGREEMENT WAS REACHED TO ACCEPT //S FORMULATION OF PARA. L8(G)(J) OF DRAFT GUIDELINES REQUIRING THAT "ANY FACTOR" TAKEN INTO CONSIDERATION IN AWARD OF CONTRACT BE SPECIFIED IN TENDER DOCUMENTATION. IN CONSEQUENCE OF ABOVE, AGREEMENT WAS ALSO REACHED TO ACCEPT THE US FORMULATION FOR PARA. 30 (SECOND ALTERNATIVE IN DRAFT) AND ON CLEAR TEXT OF PARA. 31 WHICH WOULD DELETE THE REFERENCE TO SELECTIVE PROCEDURE, THE WORD "ECONOMICALLY" AND WOULD INCLUDE THE LANGUAGE NOW SHOWN IN THE LAST BRACKET. US DEL, HOWEVER, WAS UNABLE TO ELIMINATE TWO BRACKETED SECTIONS OF PARA. 32, WHICH WOULD ALLOW, CONTRARY TO US VIEWS, TWO IMPROPER BASES FOR CONDITIONING THE AWARD OF CONTRACTS.

9. COMMENT. INTERVENTIONS BY COMMISSION AND COMMUNITY REPS CLEARLY REVEALED THAT EC DRAFT DIRECTIVE (LAST PUBLISHED IN MAY 1973) HAS BEEN CHANGED CONSIDERABLY IN INTERVAL. (COMMISSION BRUSSELS EFFORTS TO OBTAIN MORE RECENT TEXT WOULD BE APPRECIATED.) INTERVENTIONS AND CAPITULATIONS ALSO REVEALED THAT ONGOING WORK IN EC HAS BEEN TUNED TO OUR DISCUSSIONS AND RECOGNITION OF VALIDITY OF SOME US ARGUMENTS. EC POSITION STILL ROCK HARD ON PUBLICATION OF AWARDS; THRESHOLD; AND USE OF PROCUREMENT FOR FURTHERING INDUSTRIAL POLICIES. CANADIANS AND OTHERS ARE ALSO NOT LIKELY TO SIDE WITH US ON LAST OF THESE ISSUES. AFTER MEETING EC REP ASKED
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POMERANZ WHETHER HE WOULD PARTICIPATE IN BRUSSELS DISCUSSION COMING WEEK RE EC INDUSTRIAL POLICY. POMERANZ REPLIED IN NEGATIVE NOTING DISCUSSION ON INDUSTRIAL POLICY IS INTENDED TO SUBSTITUTE FOR PLANNED BILATERAL CONVERSATION ON GOVERNMENT PROCUREMENT.

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